
Will Brexit require a re-write of tax legislation?
Les Secular considers three areas of international tax where changes may have to be made if there is a Brexit

This is not an article to convince you to vote one way or the other in the referendum nor does it cover all the possible changes to the UK tax legislation that might arise if the vote calls for an exit from the EU; instead it considers three areas of international tax where changes may have to be made.

Being someone actively involved in transfer pricing it is natural that the first area I consider is the EU Arbitration Convention ('AC') and double taxation arising from transfer pricing adjustments.

Initially in force from 1st January 1995 for a period of five years with extensions, an amending Protocol was ratified in 2004 and the AC re-entered into force on 1st November 2004 with retroactive effect from 1st January 2000. The AC applies in all EU member states and establishes a procedure to resolve disputes where double taxation occurs between enterprises of different member states as a result of an upward adjustment of profits of an enterprise of one member state. It specifically refers to arbitration and a 3-year time frame and imposes a binding obligation on the contracting states to eliminate the double taxation.

The AC only applies to member states and unless a specific deal is brokered or transitional arrangements are applicable, a Brexit should require the UK to disapply the AC. This would mean that taxpayers suffering double taxation on their profits/income/gains would have to resort to the pre-1995 system of relying on the provisions of the specific double taxation with each separate member state of the EU.

Whilst some double tax agreements with EU member states provide for Arbitration and a time limit under the Mutual Agreement Procedure Article, which, in turn, is subject to the proviso that a decision has not already been reached by a court or administrative tribunal in either state, the provision is not in all treaties with EU members-until such treaties are re-negotiated, any action may therefore become more time consuming and there is no guarantee that a decision will be made between the states to eliminate the double taxation.

TPC
MANAGEMENT (UK) LIMITED

Tax intelligence

TPC Management (UK) Limited is a pure tax advisor unbound by audit restraints, thus providing a truly independent service to our clients. Our personnel are all ex-Big 4 trained and we provide a quality but cost effective service in all types of tax services, be it:

- Transfer pricing
- International tax consultancy
- Corporate tax
- VAT
- Tax risk management
- Customs duty
- Expatriate tax
- PAYE & NIC advisory
- European tax management

We also provide health checks at no cost which review your business and determines where there are gaps to be filled or opportunities to be explored that can reduce your group's effective rate of tax.

Why not give us the opportunity to show you what you have been missing?

Contact Les Secular on +44 (0)772 568 5363 or Les.Secular@TPCtax.co.uk

The second area to consider is the Interest and Royalties Directive. Under this Directive, interest and royalties paid between associated entities in different member states can be made free of any withholding taxes. Following Brexit, unless a new arrangement is entered into and/or transitional arrangements apply, withholding taxes will be governed by the provisions of double tax treaties and, again, not all double taxation agreements between the UK and EU member states provide for full exemption from withholding taxes on interest and royalty payments.

For instance, under the double taxation treaty with Poland withholding taxes of 5% can apply on certain payments of interest and royalties. The treaties with Italy and Portugal also contain provisions allowing certain interest and royalty payments to be subject to withholding taxes albeit reduced rates.

The third area for consideration is the Mergers Directive ('MD'). Adopted in 1990 the MD introduced a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies

... the potential impacts will also have similar implications for EU entities investing in the UK

of different member states and was designed to remove fiscal obstacles to cross-border reorganisations involving companies situated in two or more member states.

In the case of mergers and divisions, where the transferring company transfers assets and liabilities to one or more receiving companies, the MD provides for deferral of taxes that could be charged on the difference between the real value of assets and liabilities transferred and their value for tax purposes.

Where there is a share exchange the MD provides for tax deferral of the taxes that could be charged on the income or capital gains derived by the shareholders of the transferring or the acquired company from the exchange of such shares for shares in the receiving or the acquiring company. With Brexit, potential capital gains could arise.

It should be noted that the potential impacts mentioned above will also have similar implications for EU entities investing in the UK. ■

Les Secular is Managing Director of TPC Management (UK) Limited